

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #10	CCRB Case #: 201709888	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/01/2017 5:36 PM	Location of Incident: inside of § 87(2)(b)	Precinct: 75	18 Mo. SOL 5/1/2019	EO SOL 5/1/2019	
Date/Time CV Reported Wed, 11/22/2017 2:35 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/29/2017 10:49 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Davenia	02688	953801	PSA 2
2. POM Francis Brunetti	20678	958337	PSA 2
3. POM Peter Desiderio	30765	953817	PSA 2
4. SGT Ricardo Lewis	02411	936948	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.SGT Ricardo Lewis	Abuse: Sergeant Ricardo Lewis entered § 87(2)(b) in Brooklyn.	
B.POM Peter Desiderio	Abuse: Police Officer Peter Desiderio entered § 87(2)(b) in Brooklyn.	
C.POM Joseph Davenia	Abuse: Police Officer Joseph Davenia entered § 87(2)(b) in Brooklyn.	
D.POM Francis Brunetti	Abuse: Police Officer Francis Brunetti entered § 87(2)(b) in Brooklyn.	
E.SGT Ricardo Lewis	Abuse: Sergeant Ricardo Lewis threatened to arrest § 87(2)(b) and § 87(2)(b)	

Case Summary

On November 22, 2017, § 87(2)(b) filed the following complaint with IAB. On November 29, 2017, this complaint was received at the CCRB via referral number 17-46959. On November 1, 2017, at approximately 5:00 p.m., § 87(2)(b) was engaged in a dispute with the family of her landlord at § 87(2)(b) in Brooklyn. § 87(2)(b) called the police and Sgt. Ricardo Lewis, PO Joseph Davenia, PO Francis Brunetti and PO Peter Desiderio of PSA 2 responded to the location. Sgt. Lewis, PO Davenia, PO Brunetti and PO Desiderio entered § 87(2)(b)'s apartment (**Allegations A, B, C and D: Abuse of Authority - § 87(2)(g)**). While inside the apartment, Sgt. Lewis allegedly told § 87(2)(b) and her boyfriend § 87(2)(b) that he would arrest them if they did not leave the apartment (**Allegation E: Abuse of Authority - § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) left the apartment and no one was arrested.

There was no video of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Ricardo Lewis entered § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: Police Officer Peter Desiderio entered § 87(2)(b) in Brooklyn.

Allegation (C) Abuse of Authority: Police Officer Joseph Davenia entered § 87(2)(b) in Brooklyn.

Allegation (D) Abuse of Authority: Police Officer Francis Brunetti entered § 87(2)(b) in Brooklyn.

§ 87(2)(g)

§ 87(2)(b) (**Board Review 1**) and § 87(2)(b) (**Board Review 2**) subleased § 87(2)(b) from § 87(2)(b) for approximately four months, despite the fact that the apartment building belongs to NYCHA. § 87(2)(b) was forthcoming about this fact, while § 87(2)(b) at times stated that she subleased the apartment, but at other times stated that § 87(2)(b) allowed them to live there as guests. § 87(2)(b) stated that he was not aware that under NYCHA rules he was not allowed to sublet the apartment to anyone else and that only authorized residents were allowed. On November 1, 2017, at approximately 5:36 p.m., § 87(2)(b) and some other family members arrived at § 87(2)(b) to retrieve their property. § 87(2)(b) did not allow them to enter the apartment. The lease was ending and § 87(2)(b) informed § 87(2)(b) and § 87(2)(b) that the lease was expiring and they were no longer allowed to live there under NYCHA rules. § 87(2)(b) stated that § 87(2)(b) stated that she had squatter's rights and would not leave the apartment and that the apartment now belonged to her.

§ 87(2)(b) was alone in the apartment. She stated that § 87(2)(b) and other members of their family were hostile and violently banging on the door demanding to be let in. § 87(2)(b) refused and called 911 because she felt unsafe. Before the police arrived, § 87(2)(b) arrived home to see the people gathered outside the door. Sgt. Lewis, PO Brunetti, PO Desiderio and PO Davenia arrived approximately fifteen minutes after the call. According to § 87(2)(b) they knocked on the

door and stated, "Police. Open up." § 87(2)(b) stated she was happy to hear that the police arrived and opened the door for them. Without speaking, the four officers entered the apartment immediately upon the door opening. § 87(2)(b) and his family entered the apartment along with the police officers. § 87(2)(b) did not voice any objections to the officers entering her apartment. § 87(2)(b) asked the officers to stop § 87(2)(b) and others from verbally berating her. After some time, the officers stated that they needed to leave to respond to a different incident, but § 87(2)(b) objected to them leaving while § 87(2)(b) and his family were still present.

§ 87(2)(b)'s account was generally consistent with § 87(2)(b)'s. The officers entered the apartment immediately upon § 87(2)(b) opening the door. One of the officers asked § 87(2)(b) "What's the problem?" § 87(2)(b) was nervous and could not speak to the officers. § 87(2)(b) also stated that when the officers stated that they had to leave to respond to another incident. According to § 87(2)(b) § 87(2)(b) asked the officers not to leave.

§ 87(2)(b) stated that the officers were completely professional and did nothing wrong during the incident. He stated that § 87(2)(b) refused to open the door for him and his family. The police knocked on the door and § 87(2)(b) opened the door and allowed the officers to enter, though he did not hear her say anything inviting them in.

Sgt. Lewis, stated that § 87(2)(b) beckoned the officers inside with a wave of her arm and stated that she wanted to speak to them inside the apartment, away from § 87(2)(b)'s family. PO Desiderio stated that she asked § 87(2)(b) if they could speak and she invited them inside saying, "Yeah sure." PO Davenia stated that § 87(2)(b) stated, "Do you mind coming in?" PO Brunetti did not recall who invited them inside, but believed that someone invited the police inside the apartment.

Although expressed consent has not been articulated, implicit consent is conveyed when conversation is engaged with an officer and the officer enters the dwelling without objection. (**Board Review 7**) *People v. Smith* 239 A.D.2d 219 (1997)

§ 87(2)(g)
[REDACTED]

Allegation (E) Abuse of Authority: Sergeant Ricardo Lewis threatened to arrest § 87(2)(b)
[REDACTED] **and** § 87(2)(b)
[REDACTED]

The officers stated that they received another radio call and needed to leave. § 87(2)(b) did not want the officers to leave because she felt unsafe. Sgt. Lewis allegedly told § 87(2)(b) "If you don't leave in 30 minutes, I'm going to arrest you." § 87(2)(b) gathered her possessions, and left the apartment with § 87(2)(b) § 87(2)(g)
[REDACTED]

§ 87(2)(b) he alleged the words that Sgt. Lewis used were, “You know what? As a matter of fact, you gotta go.” Sgt. Lewis then added that he would arrest them if they did not leave.

§ 87(2)(b) confirmed that the police officers wanted to leave. At which point, § 87(2)(b) told them that she wanted their names and badge numbers. The officers provided their names and badge numbers. § 87(2)(b) stated that he believed § 87(2)(b) and § 87(2)(b) were criminals and should have been arrested, but did not hear the officers threaten to arrest them.

All of the officers denied that any of them threatened § 87(2)(b) or § 87(2)(b) with arrest. Sgt. Lewis stated that any landlord tenant dispute would have been dealt with in housing court and there was no legal enforcement action for the officers to take in this situation. All four officers stated that their purpose was to ensure no violence ensued between the disputing parties. Sgt. Lewis and PO Desiderio stated they left first to respond to other incidents with greater priority, leaving PO Brunetti and PO Davenia at the apartment, who left shortly after. All four officers stated that they did not observe any criminal activity taking place and that they had no reason to threaten § 87(2)(b) or § 87(2)(b) with arrest. They also denied that they had any reason to ask any of the residents to leave the premises.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Civilian and Officer CCRB Histories

- This is the first complaint involving § 87(2)(b) (**Board Review 3**).
- § 87(2)(b) has filed two previous CCRB complaints (**Board Review 4**).
 - § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
- Sgt. Lewis has had six other complaints involving nine allegations made against him in his thirteen year tenure at the NYPD. None of the allegations have been substantiated § 87(2)(g) [REDACTED]
- PO Desiderio has had one other complaint § 87(2)(b) [REDACTED]
[REDACTED]
- PO Brunetti has had one other complaint involving two allegations made against him in his two year tenure at the NYPD. That complaint remains open, § 87(2)(g) [REDACTED]
[REDACTED]
- PO Davenia has had one other complaint involving two allegations made against him in his five year tenure at the NYPD. That complaint remains open, § 87(2)(g) [REDACTED]
[REDACTED].

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- [REDACTED]
[REDACTED]
- According to the Office of New York City Comptroller, there has been no notices of claim regarding this incident.

Squad No.: 10

Investigator: _____ Inv. Simon Wang 04/12/18
Signature Print Title & Name Date

Squad Leader: _____

Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____